



A-0278

*SBH
G. Becker
RFR
RMS
LGC
JSC
S. Haw
G. Robert*

LAW OFFICES
QUIGLEY, WILDER & PALERMO
PROFESSIONAL CORPORATION
5TH FLOOR, PIKES PEAK BUILDING
COLORADO SPRINGS, COLORADO 80903

DANIEL E. QUIGLEY
RAYMOND E. WILDER
NORMAN A. PALERMO
EUGENE F. HART, JR.
ROBERT B. WARREN

TELEPHONE 471-7700
AREA CODE 303

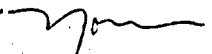
May 18, 1976

Mr. E. M. Knight
Crystal Oil Company
Post Office Box 1101
Shreveport, LA 71120

Dear Gene:

Enclosed is a copy of the Consent Decree as signed by the Judge on May 13, 1976.

Yours truly,


Norman A. Palermo

NAP/mv

Enclosure

cc: Mr. Orval Jahnke

MAY 13 1976

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

JAMES R. MANSPEAKER
CLERK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
RICO-ARGENTINE MINING)
COMPANY,)
)
Defendant.)

CIVIL ACTION
NUMBER 75-M-710
CONSENT DECREE

This is a civil action to enjoin the Defendant from the discharge of pollutants in violation of 33 U.S.C. 1311, and to collect a civil penalty from Defendant for Defendant's violation of the aforesaid statute. The authority for this action is provided by 33 U.S.C. 1319(b) and (d). Plaintiff, United States of America, filed this suit on the second day of July, 1975. An answer to Plaintiff's Complaint was filed by Defendant on the 24th day of July, 1975.

Plaintiff and Defendant, having each appeared by their respective counsel and being desirous of terminating this proceeding without adjudication of any issue of fact or law herein have consented to the making and entry of a Consent Decree, permanently ordering Defendant's compliance with conditions specified herein, without trial.

NOW THEREFORE, before the taking of any testimony, upon the pleading and without adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

ADJUDGED, DECREED and ORDERED as follows:

I. This Court has jurisdiction of the subject matter of this action and all the parties hereto. The Complaint herein states a claim upon which relief may be granted against Defendant under Section 309(b) and (d) of the Federal Water Pollutant Control Act, as amended (FWPCA) (33 U.S.C. 1319(b) and (d)).

II. On or about August 11, 1974, pollutants, in the form of approximately 3,000 to 5,000 gallons of leachate solution, were discharged accidentally and allegedly in violation of Section 301(a) and 402 of the FWPCA (33 U.S.C. 1311 (a) and 1342) from Defendant's dump-leaching operation near Rico, Colorado, into the Dolores River, a navigable water of the United States within the meaning of 33 U.S.C. Section 1362(7).

III. The Defendant consents and agrees to forfeit to the United States a civil penalty in the amount of fifteen hundred dollars (\$1,500.00) with respect to the alleged violation of the FWPCA set forth in the Complaint filed herein, and the Defendant shall within ten (10) days after the date on which the Court approves this Decree, tender to the United States Attorney for the District of Colorado, a certified check in said amount payable to the Treasurer of the United States of America. Payment of such sum shall release Defendant from any further civil or criminal liability resulting from the discharge alleged in the Complaint of this civil action.

IV. The Defendant agrees that it will not discharge pollutants from its dump-leaching operation unless they are in accordance with an NPDES permit issued pursuant to Section 402 of the FWPCA. This Decree is not and shall not be interpreted to be a permit under Section 402 of the FWPCA (33 U.S.C. 1342), nor shall it in any way relieve the Defendant of any obligation imposed by the FWPCA or any permit issued thereunder, nor shall it in any way relieve the Defendant of its obligation to comply with any other local, state or federal law in any way related to the substance of this Decree.

V. In order to prevent unauthorized discharges to navigable waters of the United States, the Defendant agrees to undertake and complete to the satisfaction of the Environmental Protection Agency certain specified activities enumerated in Attachment A in accordance with the timetable included therewith, unless extended by the Environmental Protection Agency in writing.

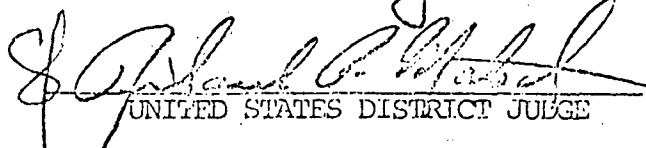
VI. From the date of the Court's approval of this Decree, the Defendant shall be permanently enjoined from further unauthorized discharges into the Dolores River and shall in all respects comply with the requirements of the FWPCA, as amended (33 U.S.C. 1251 et seq.)

VII. The provisions of this Decree shall apply to and be binding upon the Defendant, its officers, directors, agents, servants, employees, successors, and assigns, and all persons, firms and corporations acting under, through or for it, and upon those persons, firms and corporations in active concert or participation with it.

VIII. This Decree shall be without prejudice to any right of the Plaintiff to initiate any civil or criminal action in connection with any unlawful discharge by Defendant into the navigable waters of the United States other than that discharge stated in the Complaint in this civil action.

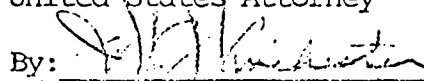
IX. Jurisdiction is retained by this Court for the purposes of enabling either of the parties to this Decree to apply to this Court at any time for any such further orders and directions as may be necessary or appropriate for the construction and effectuation of this Decree, for the modification, cancellation or termination of any of the provisions hereof, for the enforcement of any compliance herewith and for the punishment of violations hereof.

DATED: Denver, Colorado this 13th day of May, 1976.

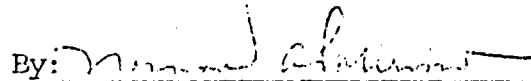

UNITED STATES DISTRICT JUDGE

We hereby consent to the entry of the foregoing final judgment.

JAMES L. TREECE
United States Attorney

By: 
JAMES W. WINCHESTER
Assistant U.S. Attorney
323 United States Courthouse
1924 Stout Street
Denver, Colorado
Telephone: 303/837-2065
Attorney for the Plaintiff

RICO-ARGENTINE MINING COMPANY

By: 
NORMAN A. PALERMO
Quigley & Palermo, p.c.
Fifth Floor, Pikes Peak Building
Colorado Springs, Colorado 80903
Telephone: 303/471-7700
Attorneys for the Defendant

Of Counsel:

John J. Iopley, Attorney
Environmental Protection Agency
1860 Lincoln Street
Denver, Colorado 80203

ATTACHMENT A

Re: U.S. v. Rico-Argentine Mining Company, No. 75-M-710
Consent Decree

In accordance with paragraph V of the Consent Decree the Defendant agrees to do the following and provide notification of completion to be given to: U.S. Attorney, District of Colorado, Attention: James W. Winchester; and EPA, Region VIII, Enforcement Division, Attention: John J. Lopley. Notification of completion shall also be given with respect to all activities required by this Agreement which have a specified deadline.

1. Relocate the main channel of the Dolores River to a centerline, 100 feet west of the toe of the west leach heap berm. Such relocation shall be in accordance with all applicable requirements of Section 404, FWPCA, as implemented by regulations issued by the Corps of Engineers and the EPA.

Deadline: August 31, 1976.

2. Place suitably sized rip-rap of native material on the west leach heap berm, able to withstand a 100-year recurrence interval run-off event. Such action is also subject to any applicable requirement of Section 404, FWPCA.

Deadline: August 31, 1976.

a. All existing heaps and containing berms and all new heaps and berms, shall be modified as appropriate, to ensure that any slump of the heap will not cause the heap material to bridge the containing berm(s). Such actions shall include, as appropriate the following and shall be certified by a registered professional engineer, qualified in the field of soil mechanics:

1. reduction in height of the heap to a level which is relative to the height of the containing berm, is adequate to prevent a discharge should a slump of the heap occur, and

2. provide adequate horizontal distance between the inside edge of the containing berm crest and the outmost edge of the heap crest.

3. Revise the SPOC Plan as necessary to recognize action taken in items 1 and 2.
Deadline: September 30, 1976.

4. Establish a minimum of five water quality monitoring stations along the west berm and western most portion of the south berm. Each station should be clearly identified and labeled on site, and shall be established in such a manner so as to ensure meaningful samples that are indicative of potential solution losses from the heap leaching operation.
Deadline: June 1, 1976.

5. Establish a water quality monitoring schedule with a minimum of twice (2) weekly sampling of all monitoring stations identified above in item 4. All samples shall be measured for pH, and conductivity using EPA approved analytical methods. Free cyanide shall be determined once weekly for all monitoring stations identified above in item 4.
Deadline: June 1, 1976

6. Establish a minimum of three water quality monitoring stations on the east bank of the Dolores River as follows:

- a. upstream of all influence of the heap leaching operation (minimum of 200 feet upstream of north most berm of the heap),
- b. 200 feet downstream of the southwest corner of the southern most berm of the heap,
- c. immediately downstream of the state highway bridge located on the north edge of Rico, Colorado.

Deadline: June 1, 1976.

7. Establish a water quality monitoring schedule with minimum of weekly sampling of all monitoring stations identified above in item 6. All samples shall be analyzed for pH, free cyanide, and conductivity using EPA approved analytical methods.
Deadline: June 1, 1976.

8. Submit to the EPA and Colorado Department of Health a detailed map of the facility showing the location and identification code for each monitoring station established in accordance with items 4 and 6.
Deadline: June 1, 1976

9. Log monitoring results and report:

a. Establish a log for recording the collection and analysis of all water quality samples required as set forth in this Agreement. Such a log shall indicate the name of the sampler(s), date and time of sampling observations, sample identification codes, the name of the analyst(s), date and time of analysis for each sample and the result of the analysis or instrumental reading. Equipment calibrations shall also be logged giving the name of the person performing the calibration, the date, and the type of calibration and adjustment made, and the serial number of the calibrated device

Deadline: June 1, 1976

b. Submit monthly reports of the results of all analytical measurements performed. All such monthly reports shall be submitted no later than 10 days following the end of the reporting period to the EPA and the Colorado Department of Health. First report shall be submitted for the month of May 1976.

Deadline: June 10, 1976.

10. Notify EPA and the Colorado Department of Health by telephone immediately of any measured analytical values in an single sample meeting the following criteria:

a. pH greater than or equal to 9.0 or;

b. pH greater than or equal to 1.0 standard unit above any of the three previously recorded values for any individual station or;

c. free cyanide in any detectable quantity (greater than 0.02 mg/l) or;

d. conductivity measured at stations established under items 6 b and c, greater than or equal to 100 micromhos (corrected to 25°C) above the conductivity measured at the upstream station established under item 6 a.

11. Inspect the leaching operation:

a. Perform a facility inspection at least once per eight hour period when the leaching operation is being conducted. When there is no operation taking place, i.e., the operation is closed for the winter and leaching fluids are not being pumped to the heap, inspection shall be once per week at regular interval. Each such inspection shall include examination of the condition of all heaps, containing berms, water level in all impoundments and tankage, flow meter readings, and other features of the facility that could provide indication of impending embankment failure or loss of leaching solution.

b. Initiate and maintain a log for recording the observations of each facility inspection, including the name of the inspector, date, time, observations, reporting of any adverse conditions in accordance with the SPCC Plan, any corrective actions taken, and such other information as appropriate.

Deadline: June 1, 1976.

12. Complete testing and a study of the potential use of dye(s) in the visual detection of spills and/or leaching solution losses. In the event a decision is made to use dye(s) as a detection device, a full report shall be submitted to EPA and the Colorado Department of Health along with the proposed plan to implement the dye monitoring system. If the EPA and the Colorado Department of Health agree that a dye detection system will not create significant adverse environmental or process difficulties the company will be given written approval. In such event and thereafter, the company will not be required to monitor for free cyanide as required by items 5 and 7 of this Agreement.

13. Provide 60 days prior notice to EPA and the Colorado Department of Health of any action to expand or significantly modify the heap leaching operation or any associated facility (i) for purposes of allowing EPA and the Colorado Department of Health to provide constructive comment. All such notices shall be accompanied by an outline of the engineering design and description of environmental safeguards to be provided. Appropriate modifications to the SPCC Plan and proposed environmental monitoring changes shall be provided with all such notices.

14. Provide documentation for the existence of reclamation and stabilization plans on file and approved by the appropriate agent in the State of Colorado, at such time as said plans are requested by the State, for all disturbances resulting from and associated with the heap leaching operation.